BEFORE THE INVESTIGATIVE PANEL OF THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE, RALPH E. ERIKSSON, NO. 09-629 — SC10-1007

RESPONSE TO MOTION TO DISMISS OR MOTION FOR MORE DEFINITE STATEMENT

Comes now the Florida Judicial Qualifications Commission (Commission), by and through undersigned counsel and in response to Judge Eriksson's Motion to Dismiss or Motion for More definite Statement would show as follows:

MOTION TO DISMISS

1. The Rules of the Commission make no provision for a motion to dismiss. Under the Commission's Rules, an Investigative Panel consisting of members of the Commission is charged with the responsibility for investigating the conduct of Florida judges to determine whether there is probable cause to institute formal charges.
2. The Commission's Rules then provide that upon the filing of Formal Charges, "the judge may serve and file an Answer," following which "the Hearing Panel shall receive, hear and determine formal charges from the Investigative Panel." (Rules 7 and 9).

3. Although Rule 12 provides that “in all proceedings before the Hearing Panel, the Florida Rules of Civil Procedure shall be applicable except where inappropriate or as otherwise provided by these rules,” a motion to dismiss is inappropriate where the Rule specifically provides for a hearing to determine probable cause and for the judge to file an answer to the charges.

ARGUMENTS I AND II

1. The respondent judge’s thesis in Argument I fundamentally misapprehends the significant legal difference between an appeal and Petitions for Writs of Habeas Corpus or Certiorari. The responding judge argues that so long as a mandate has not issued from the numerous cases cited in which he imprisoned citizens without appropriate notice or opportunity to be heard, then he was free to continue the practice with impunity.
2. When an appellate decision becomes final the appellate court issues a mandate. Fla. R. App. P. 9.340(a). However, Petitions for Writs of Habeas Corpus or Certiorari are original proceedings for which the Circuit Court has original jurisdiction in situations such as in the present inquiry. Fla. R. App. P. 9.030(c)(3). Such petitions are resolved by the issuance of the appropriate writ. Importantly, no mandate is or can be issued in these collateral proceedings designed to challenge the legality of the detentions.

3. It is remarkable that the responding judge argues that unless and until he receives a mandate in these cases, that he is somehow legally unaware[1] and not accountable for the improper deprivation of the liberty of citizens.
4. The fiction of legal ignorance employed by the responding judge is contrary to established law. A decision of a circuit court, sitting in its appellate capacity is binding on all the county courts of the circuit. This is true even in decisions involving the grant or denial of writs of certiorari or habeas corpus. *Gould v. State*, 974 So.2d 441 (Fla. 2nd DCA 2007).
5. In the case *State v. Potiah*, Seminole County Case No. 09-36-AP, Circuit Judge Donna L. McIntosh granted a Writ of Habeas Corpus releasing Mr. Potiah from custody. The Writ was issued in a decision dated June 30, 2009. In granting the Writ, Judge McIntosh found that no rule or statute provides for Sentence Review Hearings, and that the county court of Seminole County had no jurisdiction to enforce the financial obligations in the manner the responding judge later employed.
6. However the responding judge continued to hold Sentence Review Hearings until his improper actions were revealed in the local news media.

[1] The Writs of Habeas Corpus in *Kelly v. State*, 09-CA-10620-J and *Brockington v. State*, 09-CA-9930-16J show service of the Writs upon the responding judge.

ARGUMENT III

1. The responding judge argues that the "rulings in the cases cited in the Notice of Formal Charges will not violate the decision in Potiah v. State, if Potiah ever becomes a final order." This statement is remarkable for at least two reasons.
2. One, as explained previously, *Potiah* became final upon the issuance of the Writ and was binding authority on the responding judge. *Gould*, *supra*.
3. Secondly, the responding judge continues to refuse to acknowledge or recognize that Judge McIntosh consistently held that the procedure that he utilized was legally improper. As was recited in the Notice of Formal Charges, in *Wellon et al. v. State*, 09-46-09-62AP *Alvarez, et al. v. State*, 09-67AP, *State v. Brockington*, 07-225-MM, *State v. Molina*, 08-13256-MM, *State v. Bundick*, 02-11775-MM, *State v. Kelly*, 09-2830-MM, *State v. Ryder*, 08-5083-MM, *State v. Kuse*, 09-3568-MM, and *State v. Colon*, 09-3294-MM writs of certiorari or habeas corpus were granted. In those writs Judge McIntosh consistently found that the procedure used by the responding judge was legally flawed. The responding judge in Argument III continues to argue his legal position despite binding contrary authority.
4. It is important to note that the focus of a judicial disciplinary matter is the responding judge's recalcitrance and intransigence to follow

binding decisional authority, not his idiosyncratic interpretation of the law.

ARGUMENT IV

1. Commission Rule 6(g) governs the language of the Notice of Formal Charges. "The notice shall be issued in the name of the Commission and specify in ordinary and concise language the charges against the judge and allege the essential facts upon which such charges are based". The Notice of Formal Charges alleges the essential facts and does so in ordinary and concise language.
2. The responding judge fails to recognize that the procedures he employed imprisoning citizens without proper notice or an opportunity to be heard were found to be illegal by the circuit court when it reviewed his actions in the cases cited in the Notice of Formal Charges. The responding judge fails to acknowledge that the rulings of Judge McIntosh were binding upon him. He repeats his erroneous assertion that *Potiah* and the other 'writ" cases are still not final since no mandates have been issued, even though mandates are not issued in such cases.
3. As was stated previously, the formal charges were drafted to address the responding judge's pattern of conduct in refusing to follow the dictates of a superior court, rather than parse the vagaries of his tortured construction of the law.

4. As to the assertion that the responding judge requires a more definite statement, the particularity with which he replies undercuts his assertion that he is unaware of the concerns of the Commission as expressed in the formal charges.

ARGUMENT V

1. Finally the responding judge claims the Commission is without jurisdiction in this matter since the allegations concern "rulings on, or interpretations of, the law by the county judge in his capacity as a county judge, and in proceedings that he had jurisdiction of and was properly presiding over." The Florida Supreme Court in the responding judge's prior judicial disciplinary case rejected this same claim of lack of jurisdiction. *In re Eriksson*, 36 So.3d 580, 588 (Fla. 2010.)

Wherefore, based upon the foregoing, the Commission requests that the Motion to Dismiss or Motion for More Definite Statement be denied.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Investigation has been furnished by U.S. mail to the Honorable Ralph E. Eriksson**,** Seminole County Courthouse, 101 Bush Blvd., Sanford, Florida 32773, the Honorable Thomas B. Freeman, Chairman, Hearing Panel, Criminal Justice Center, 14250 49th Street North, Clearwater, FL 33762-2801, and John R. Beranek, Esq., Counsel to Hearing Panel, PO Box 391, Tallahassee, FL 32302 this ___ day of August, 2010.

_____
Michael L. Schneider
General Counsel